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IN THE

Supreme Court of the United States

October Term, 1961

No. 722

In the Matter of the Petition of

Moore-McCormack Lines, Inc. as Owner of the S.S. "Mormackite" for Exoneration from or Limitation of Liability.

MOORE-McCORMACK LINES, INC.,

Petitioner,

against

JEAN O. RICHARDSON, Individually and as Executrix of the Estate of HAROLD H. RICHARDSON, *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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(A) As to the First Question Presented

The damages for the deaths consisted of the pecuniary loss sustained by those for whose benefit the suit was brought (46 U. S. C. A., Sec. 762).

That a child's being deprived of paternal care, guidance and nurture is a pecuniary loss is the thoroughly established rule and that the right to recover for that loss is an item of pecuniary damage allowable under the Federal Death Statutes cannot be gainsaid. *Michigan Central R.R. v. Vreeland*, 227 U. S. 539; *Norfolk & Western Ruy. v. Holbrook*, 235 U. S. 625; *Naylor v. Isthmian S.S. Co.*, 94

F. Supp. 422 (S. D. N. Y.), reversed on other grounds in 187 F. 2d 538 (Second Cir.); *The Alice Mon*, 1944 A. M. C. 392; *City of Rome*, 48 F. 2d 333.

The question here presented is the propriety of the amounts awarded for the pecuniary damage occasioned to children by the loss of paternal nurture.

Petitioner writes of the loss of a father's nurture as though it were a commodity purchasable on the market. This is as gross a misconception of the nature of the loss as can be imagined. The value of nurture arises out of the *relationship* of the father to the child and nothing else.

The vital importance of a father to the rearing of his children cannot be overestimated. Particularly is this so in our present society with its acute concentration on the problems of youth. The loss of a father's guidance to young children has been called a most substantial one. *Miller* v. *Southern Pacific*, 256 P. 2d 603 (Calif.). The value and importance of a father's care has been recognized long ago, even before modern psychiatry and psychology have made its significance a matter of common knowledge. *Sternfels* v. *Metropolitan Street Railway Co.*, 73 App. Div. 494, aff'd, 174 N. Y. 512; *Tillou* v. *R. R. Co.*, 29 N. Y. 252; *Briscoe* v. *U. S.*, 65 F. 2d 404 (2nd Cir.).

Cadiz

Mrs. Cadiz' testimony was that her husband was a most devoted father. In addition to insisting that the boys be well educated, and making provisions for such an education, he kept after them with respect to their school work, helped them with their homework, explained things whenever he could (R. 9749, 9750, 9762).

When he was not at sea he spent all his time with the family (R. 9749). He would take the boys and his wife to museums and other cultural centers, played with the boys, took them to ball games and similar places of recreation (R. 9749, 9780, 9781).

Nor was his fatherly interest and devotion lessened any by going away to sea. He would write to them about places of interest and send and give them gifts and souvenirs from far-off places (R. 9762, 9763, 9764). Patently, his wife's description of him as a "good man, responsible, devoted to his children" (R. 9749) was more than justified. Manifestly, for children to lose such a guiding force in their formative years was to sustain a most substantial loss.

Petitioner professes to see no loss in the children being deprived of the above. To petitioner there is apparently no difference between a father, who is concerned about his children, who is a companion to them, who takes them places and does things with them, who in the vernacular, "keeps them out of trouble", and the father who leaves his children to their own devices. Whenever a case of juvenile delinquency occurs, almost invariably it is pointed out that the cause was the parents' indifference, lack of joint interests, absence of guidance, and the like. Yet petitioner has the temerity to say that when a child has been deprived of that guidance it has lost nothing.

Nor does wealth and education have anything to do with the loss, or its extent. Proper parental guidance in the formative years of a child make good citizens of them no matter what schools the father went to, or in what bracket his income tax may be. On the other hand, the court needs no reminding that some of the worst juvenile delinquents come from well-to-do and highly educated families.

Richardson

Harold Richardson, the Chief Mate of the MORMACKITE, died at the age of 31. He was survived by his widow, Jean, aged 31, and two infant daughters, Gail Ann, aged 7 and Barbara Jean, aged 4. He was a licensed Master Mariner having received his formal education at Admiral Farragut Academy and the New York State Maritime

Academy. He was also an officer in the Naval Reserve. In the ten year period subsequent to his graduation from the Maritime Academy he had rapidly risen through the officer ranks at Moore-McCormack. Writing to Mrs. Richardson after the disaster Mr. W. T. Moore, President of Moore-McCormack, said:

> "* * * Harry was one of the family and his loss is a terrible blow to all of us. He came to us directly from the State Academy and carved for himself a distinguished record winning the respect and admiration of all with whom he came in contact." (Clts.' Exhibit 32 in Limitation Proceedings.)

This was the father that Gail Ann and Barbara Jean lost.

Of course, Richardson spent a good deal of time away from his family. He had to. This was his job. He was a ship's officer in the employ of petitioner. But would this make him any less a father, the pride of his daughters, their confidant and instructor. At times we all must go on trips—some times for extended periods—do we cease to be fathers? We think not.

Richardson's wife testified that he was a devoted husband and father (R. 7931) and that he spent as much of his time in port as he could with his children (R. 7930-31). This testimony was unchallenged and the court so stated in making its finding that "he was a devoted husband and father" (7a). What more does petitioner demand by way of proof of loss of nurture. The devoted father is dead! Richardson's children were only 7 and 4 when their father died. Their formative years were ahead. These are the years for which the court made its award. They have been deprived of invaluable care, companionship, attention, instruction and training which only a father can give and which this devoted father was well prepared to give them. He was well educated, able, had "the respect and admiration of all with whom he came in contact" and would have had ample opportunity to provide this advice, training and guidance.

Wall

Edward Wall, the Chief Engineer of the "MORMACKITE" died at the age of 33. He was survived by his widow Virginia, a stepchild Juan, aged 16, Silvio, aged 10, and Maureen, aged 3. After graduation from high school he joined the Merchant Marine and in short order worked himself up from the black gang to officer rank.

Wall, like Richardson, had risen quickly in the officer ranks at Moore-McCormack. At 33 he held a top position in the fleet. His loss was felt "very keenly—not only because he was one of our [Petitioner's] most outstanding engineers but also because of the affection we [Petitioner] felt for him. In the ten (10) years he was with this Company (Moore-McCormack) we always found that his attention to duty was of the highest * * *" said Petitioner's Supt. Engr. (Clts.' Exh. 31 in Limitation Proceeding) Moore-McCormack's President wrote to Mrs. Wall

> "* * * Your husband who had served this Company faithfully and well since 1943 was regarded as one of the outstanding Engineers of our Fleet. More than his fine record he was regarded with respect and admiration by all whose privilege it was to know him." (Wall Exh. 5).

This was a model officer dedicated to his family and to Moore-McCormack. The court below found him to be "a devoted husband and father" (17a).

Like Richardson, his job required him to be away from home a good deal of the time. He tried to stay ashore so that he would have more time with his family but found he could not earn the same living. Unwilling to stay home at his family's expense he returned to the sea (16a). He was well able to provide advice, training and guidance and had ample opportunity to do so. The court's finding that Wall was a devoted father was uncontradicted on the trial (17a).

Mrs. Wall testified that her husband was extremely devoted to his children and they to him (R. 8180). He had great plans for his sons and their futures. He was directing and counseling Juan to study engineering (R. 8181). Silvio was being guided toward the study of law (R. 8182). It is true that these boys remained in Mexico when Wall and his wife moved to New York in February of 1954. However, this was a temporary arrangement. As part of his guidance and training program for the boys Wall sent them to private schools in Mexico (R. 8177). They were to be brought to New York as soon as the school year ended (R. 8153, 8175). Wall's untimely death has deprived these boys of invaluable care, companionship, attention and instruction during the most formative years of their lives. The reward of the court hardly compensates them for their loss.

Maureen was only 3 when her father died. She was not yet old enough to profit from a father's guidance and instruction. Nevertheless he kept as close to her as he could. She came to New York when her mother and father moved. Before that she accompanied Mrs. Wall when she made a trip on the "MORMACKITE" with her husband. Today her father is little more than a memory. She has been continuously deprived of his fatherly advice and counsel throughout the formative years of her life.

How are we to evaluate these losses?

It was said in *Norfolk & Western Railway* v. *Holbrook*; 235 U. S. 625, 629:

> "In the present case there was testimony concerning the personal qualities of the deceased and the interest which he took in his family. It was proper, therefore, to charge that the jury might take into consideration the care, attention, instruction, training, advice and guidance which the evidence showed he reasonably

might have been expected to give his children during their minority, and to include the pecuniary value thereof in the damages assessed."

We know of no formula for determining the pecuniary value of this loss. Some measure of it may be gleaned from analogy. If the trauma to a child of nine or ten occasioned by the death of a father and the loss of his care and guidance should ultimately lead the child to becoming disturbed, the cost of obtaining a substitute for the father's care, guidance, nurture and advice by way of psychological or psychiatric care would, as a matter of common knowledge, be in the neighborhood of $20,000.00 each. In this connection, the Court's attention is called to *Miller* v. *Southern Pacific Railway Company*, 256 P. 2d 603 (Calif.) where the court in writing of the issue said, at p. 613:

"Twenty thousand dollars readily could be accounted for as the award to Miller's children for the loss of their father's care, attention, instruction, training, advice and guidance * * *"

An illuminating case is *Frasier* v. *Public Service Interstate Transportation Company*, 244 F. 2d 468 (2nd Circuit). In that case the decedent's earnings were considerably less than those of the decedents in this action. A state court verdict of $90,000.00 was set aside as excessive, while a subsequent district court verdict of $115,000.00 was held to be proper. It was pointed out:

"* * * The record on appeal before the Appellate Division shows that upon the trial in Kings County the jury was not instructed upon, and could not have considered the pecuniary loss to the three minor children of the care, guidance and advice of their father * * *"

In *Beaver* v. *U. S.*, 173 F. Supp. 547 (S. D. N. Y.), the court allowed $4,500.00 a year for loss of parental nurture

for each child of the decedent. *Cf.*, also the recent decision in *U. S. v. Harue Hayashi*, 282 F. 2d 599 (9th Cir.) where on proof quite similar to that here presented, the court held that an award of $100 a month for each child's loss of a father's guidance was proper.

The loss of nurture and guidance and the evaluation thereof presents no question for review.

(B) As to the Second Question Presented.

Since both parties, albeit for different reasons, ask review of the pre-judgment interest issue, it would be only fair that if certiorari is granted on one point, it should be granted with respect to all the points raised with respect to that question.

Respectfully submitted,

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